IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 806 of 1991

With

CIVIL REIVSION APPLICATION NO.765 OF 1986

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NILABEN HASMUKHLAL ZAVERI

Versus

VIJYABEN C RAWAL

Appearance:

CRA 806/1991

MR SHIRISH JOSHI for Petitioner

MR MANOJ N POPAT for Respondent

CRA 765/86

MR PJ PATEL for Petitioner

MR SHIRISH JOSHI for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/02/2001

ORAL JUDGEMENT

1. The first of the above matters is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the Bombay Rent Act for short) at the instance of the original plaintiff-landlord, challenging a finding recorded by the lower appellate court, in the course of the judgement which has resulted in a decree of eviction in favour of the present petitioner-landlord.

1.1 The second of the above matters is a revision filed by the tenant-original defendant under section 29(2) of the Bombay Rent Act, challenging the decree of eviction passed against him by the lower appellate court.

2. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

3. The present petitioner-landlord as plaintiff had sued the respondent-tenant for a decree of eviction on the ground of arrears of rent of more than six months, under the provisions of the Bombay Rent Act. The defendant-tenant had raised a dispute as to standard rent. The trial court had dismissed the suit of the landlord so far as the decree for eviction is concerned, on the ground that the standard rent had been determined by the court only as a result of the judgement in the suit, and that therefore the trial court was required to grant time to the tenant to pay up the arrears of rent according to the standard rent determined in the said judgement. Since the defendant-tenant had paid up the arrears within the specified time, no decree for eviction

could be passed. The trial court had also determined, on the facts of the case, that the standard rent of the premises would be Rs.600/- per month (exclusive of municipal tax and education cess) and electric burning charges.

4. Being aggrieved by the aforesaid dismissal of the suit, the landlord had preferred an appeal under the provisions of the Bombay Rent Act. The lower appellate court, on a total reappreciation of the evidence on record, confirmed the determination of standard rent of the suit premises at Rs.600/- per month, and confirmed that the tenant was also liable to pay electricity charges. The lower appellate court, however, found on the facts and evidence on record that the landlord had failed to establish his claim that the tenant was also liable to pay municipal tax as also the entire amount of education cess. The lower appellate court further found that in law the landlord could recover one half of the education cess, and therefore to that extent, this claim was allowed. The lower appellate court therefore determined the standard rent at Rs.600/- per month (which was the contractual rent), and allowed in favour of the landlord electricity charges, and one half education cess. The lower appellate court also found that during the course of the appeal the tenant had not been regular in depositing the standard rent in the appellate court. However, the lower appellate court observed that the controversy as to the determination of standard rent by the rent court was directly in issue in the appeal on account of the cross-objections filed in the appeal by the tenant, and that it was only at the judgement stage that standard rent was confirmed at Rs.600/- per month plus electricity charges plus one half education cess. The lower appellate court, therefore, granted time to the tenant to pay up the arrears then due. However, since the tenant did not pay up the arrears due till the date of the judgement within the specified time, the lower appellate court passed a decree for eviction. It is under these circumstances that the landlord has preferred the present revision under section 29(2) of the Bombay Rent Act.

4.1 The second of the above matters, as aforesaid, is a revision filed by the tenant, challenging the decree of eviction passed by the lower appellate court in the fact situation narrated hereinabove.

5. Firstly it must be noted that the landlord has already obtained a decree of eviction against the defendant-tenant and therefore cannot possibly have any

grievance on that account.

6. The only contention raised in the present revision application by the landlord is as regards the determination of standard rent by the trial court as confirmed by the lower appellate court. So far as the specific figure is concerned viz. Rs.600/per month, both the trial court and the lower appellate court have found that this was the contractual rent, and it being fair rent, and also being "standard rent" within the meaning of section 5(10) of the Bombay Rent Act, the same requires to be confirmed. Furthermore, both the courts have allowed electricity charges in favour of the landlord and against the tenant and obviously therefore no controversy can be raised in this regard.

7. The only controversy on the part of the landlord which would then survive is whether the landlord would be entitled to municipal tax and education cess, as forming part of the standard rent.

8. It is an admitted fact that there is no rent note in writing. Thus, the determination of the terms and conditions of tenancy at the time of letting is to be assessed from the evidentiary material on record. The lower appellate court has correctly appreciated the oral evidence of the plaintiff-landlord, the oral evidence of the defendant-tenant as also the oral evidence of the landlord's witness Himmatlal Tribhovandas at Exh.36. As a result of the appreciation of such evidence, the lower appellate court found that the landlord had failed to establish that the tenant was let the suit premises on terms which included the tenant's obligation to pay the municipal tax as also the entire levy of education cess. It was on this basis that the lower appellate court disallowed municipal tax as forming part of standard rent, but permitted one half education cess inasmuch as this is recoverable by law. In sum and substance therefore the only contention which would possibly be raised in the present revision is that the lower appellate court ought to have allowed municipal tax as part of standard rent in favour of the landlord. As aforesaid, this is entirely a question of fact and the question of appreciation of the evidence on record. It is not within the province of this court, while exercising jurisdiction under section 29(2) of the Bombay Rent Act, to interfere with such appreciation of the evidence. Even otherwise and even on a reappreciation of the evidence on record, I am of the view that this finding is justified and therefore requires to be confirmed.

8.1 So far as the revision filed by the tenant is concerned, the tenant contends that the standard rent fixed by the lower court at Rs.600/- per month was excessive and the finding of the lower appellate court holding the same to be the standard rent was perverse. This contention cannot be accepted for the simple reason that the burden of proving that the contractual rent is excessive and should have been fixed at a lower figure is on the tenant. The lower appellate court has, on a reappreciation of the evidence on record, found that the tenant has failed to discharge his burden by leading appropriate evidence, and the tenant has failed to establish that the contractual rent was excessive in any manner. This is purely a question of appreciation of evidence and also a question of fact, which cannot be agitated in a revision under section 29(2) of the Bombay Rent Act. In any case, even on a reappreciation of the evidence on record, I find no reason for taking any view contrary to the view taken by the lower appellate court.

8.2 The tenant in the second of the above matters also contends that the decree of eviction passed by the lower appellate court was contrary to law. Firstly, no provision of law is pointed out wherein the court would be barred from passing a decree of eviction, on the ground that the tenant has failed to deposit the rent regularly in the court, and also failed to deposit the arrears of rent (as per the standard rent confirmed by the lower appellate court) within the stipulated time. Consequently the only other submission that could be made was to the effect that the lower appellate court failed in its duty to extend the time granted to the tenant for depositing the arrears. It goes without saying and it is an admitted position that the lower appellate court had in fact granted time, even after delivering the impugned judgement confirming the standard rent at Rs.600/- per month. It is also an admitted position that the tenant not only failed to deposit the amount within the stipulated time, but also that the tenant failed to deposit a single rupee within the stipulated time, to the extent of his ability to pay, in order to establish his bonafides and with a view to establish that "he is ready and willing to pay the rent" within the meaning of section 12(1) of the Bombay Rent Act. The fact that the lower appellate court refused to extend the time on the second occasion on the request of the tenant is entirely a matter of discretion of the lower appellate court, and cannot in any manner amount to a jurisdictional error. If the lower appellate court in the course of its judgement grants time to the tenant (beyond the date of

the judgement) to pay up the arrears of standard rent, and then declines to extent the time any further, the same could not in any manner be said to be a jurisdictional error which would justify interference in the present revision under section 29(2) of the Bombay Rent Act. As aforesaid, it is entirely a matter of discretion on the part of the lower appellate court, and on the facts of the case, it cannot be said that the discretion was exercised contrary to law or in violation of the law or outside the law. Thus, the discretionary order not extending the time for making the payment also does not justify any interference, particularly in view of the fact that the tenant did not make the deposit of a single rupee during the initial period granted to the tenant for making the deposit in order to establish his bonafides and "readiness and willingness to pay". Thus, even this revision by the tenant (the second of the above matters) has no substance.

9. I, therefore, see no substance in both the present revisions. They are, therefore, rejected. Rule is discharged with no order as to costs in both the matters.

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